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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MAURICE PHILLIP LEAGUE,

Defendant and Appellant.

D052530

(Super. Ct. No. SCD198278)

APPEAL from a judgment of the Superior Court of San Diego County, Robert F. O'Neill, Judge. Affirmed.

A jury found Maurice League guilty of second degree robbery (Pen. Code,<sup>1</sup> § 211, count 1), assault with a semiautomatic firearm (§ 245, subd. (b), counts 2, 3, 4 and 5), and possession of a firearm by a felon (§ 12021, subd. (a)(1), count 6). The jury found true allegations that League personally used a firearm in the offenses of counts 1 through 5. (§§ 12022.5, subd. (a)(1), 12022.53, subd. (b).) League admitted allegations that he had

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<sup>1</sup> Statutory references are to the Penal Code unless otherwise indicated.

suffered a prior conviction qualifying as a strike (§§ 1170.12, 667, subd. (b)-(i), 668), a serious felony (§ 667, subd. (a)(1)), and a prior prison term (§ 667.5, subd. (a)). The court denied League's motion to dismiss his prior strike conviction and sentenced League to a 37-year prison term.

On appeal, League contends the trial court prejudicially erred by (1) admitting into evidence testimony of a police officer pertaining to the curbside identification of a second perpetrator; (2) barring defense inquiry into a witness's mental health history; and (3) denying his defense motion to strike his 1994 robbery strike conviction. We affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND

On December 26, 2005, League and three other men wearing dark clothes entered an Old Navy clothing store in Mira Mesa and, at gunpoint, forced the store's customer service manager to give them approximately \$4000 from the cash register drops and back office safes. The store's manager was unable to identify any of the individual robbers. One of the cashiers, Alma Valencia, was approached by an individual holding a silver revolver with a wooden handle, who asked her to open her drop box. She responded that she could not and called to the manager, who approached her followed by another armed man. The second man grabbed the manager and led him at gunpoint to the back of the store. According to Valencia, all of the men appeared to be African-American; though one of the suspects had covered most of his face, she was later able to identify him to police as the first individual who had approached her (De'Sean Davis) by his clothing and complexion.

At about 7:00 p.m. that evening, William Mortenson was parked in front of the Old Navy store when he heard a woman calling 911 and stating there had been a robbery. He looked and saw four individuals in dark, baggy clothing walking away and throwing gang signs. One of the individuals had a hood over his head. One of the men, who Mortenson later identified as League, split off from the others and Mortenson began to follow him through the parking lot so he could identify him to police. The parking lot was well lit and Mortenson could see League was hooded, wearing dark baggy pants and a dark oversized hooded sweater. Hearing someone following, League turned around, saw Mortenson, and quickened his pace. Several steps later, he pulled out a gun and clip, turned, and attempted to fire the gun at Mortenson, who ducked behind a car. Mortenson heard a click and saw the clip fall out of the gun. Mortenson made eye contact with League both times he turned around and could see League's face. League picked up the clip from the ground, looked at Mortenson and ran away out of Mortenson's sight.

San Diego Police Department Sergeant Philip Martz, Jr. responded to a call about the robbery. Later that evening, he found League crouched by a construction truck in a lot across the street from the Old Navy store along with gloves and a semiautomatic handgun under the truck. Sergeant Martz identified the man as League at the preliminary hearing based on booking photographs. Another police officer responding to the call found Davis about a hundred yards from the Old Navy store between two cars in the parking lot.

After the incident, police conducted two separate curbside lineups. Old Navy's loss prevention officer, Amalia Phillips, identified League as one of the men who carried

a semiautomatic weapon. Valencia recognized both individuals; the individual in the second lineup was not the person who first approached her. Approximately ten days after the robbery, Mortenson identified League's picture out of a police photographic lineup after recognizing his face. At trial, Mortenson identified League as the man who had attempted to shoot at him that evening. Another police officer who had assisted Sergeant Martz that evening identified League as the person the sergeant had detained.

San Diego Police Officer Daniel Samilo was permitted over League's hearsay and relevance objections to testify that he conducted curbside lineups of first Davis and then League to Alma Valencia and Amalia Phillips. According to Samilo, in the first lineup, Valencia recognized "the individual in lineup No. 1" by his shoes: Nike Airs. In the second lineup involving League, Officer Samilo recalled that Phillips told him she was 95 percent sure League was the man she saw.

## DISCUSSION

### *I. Admission of Identification Testimony*

League contends the trial court erred by permitting the prosecutor to introduce Officer Samilo's testimony relating to the fact of curbside lineups after the incident and the witnesses' identification of Davis as a second perpetrator. Relying on *People v. Williams* (1979) 93 Cal.App.3d 40, he maintains the inquiry on Davis's identification was "not relevant to any issue in the case"; that the fact Valencia and Phillips identified Davis as a perpetrator did not establish the accuracy of their identifications of League. League argues his federal constitutional right to a fair trial was violated by the error, which

cannot be determined to be harmless beyond a reasonable doubt under the standard of *Chapman v. California* (1967) 386 U.S. 18, 24.

We apply the abuse of discretion standard of review to the trial court's rulings on relevance and admission or exclusion of evidence. (*People v. Hoyos* (2007) 41 Cal.4th 872, 898; *People v. Harrison* (2005) 35 Cal.4th 208, 230; *People v. Rodriguez* (1999) 20 Cal.4th 1, 9.) The court's evidentiary ruling will not be disturbed in the absence of a showing it exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*Rodriguez*, at pp. 9-10; *People v. Avitia* (2005) 127 Cal.App.4th 185, 193.)

Application of this standard reveals no error. By the time Officer Samilo was put on the stand, both Valencia and Phillips had already testified that they had identified two suspects as the armed robbers – first to police during two separate curbside lineups on the night of the incident and also at the preliminary hearing. Phillips's testimony indicated that the man who had escorted the store manager to the back room held the semiautomatic weapon, and that League was that person in the second lineup. Defense counsel on cross-examination sought to show, based on the written police report recounting her curbside identification, that Phillips was confused as to whether it was League or someone else who took the store manager to the back room with the semiautomatic handgun. Nevertheless, she maintained that the individual in the first lineup was not the person who took the store manager to the back room. Phillips stated on redirect examination that she was very certain that the individual in the second lineup, League, was the one who escorted the manager.

The prosecutor explained in the face of League's objections that she sought to introduce Officer Samilo's testimony in order to confirm or provide "linkage" to Valencia's and Phillips' identifications of the two suspects detained by police on the night of the robbery. The trial court admitted Officer Samilo's testimony on grounds it was important for the jury to understand the sequence of events with respect to Davis's and League's identifications; "that there is going to be some overflow or overlap into things that occurred as to Mr. Davis who is not before the court in this case at this time and the possibility there was a third, or even a fourth, individual involved." Officer Samilo was able to testify about the order in which he conducted the curbside lineups (first Davis, then League) and the fact Phillips told him she was 95 percent certain about her identification of the person in the second lineup. Under these circumstances, the officer's testimony had a tendency in reason (Evid. Code, § 210) to establish League's identity and his possession of the semiautomatic weapon: the fact League was the subject of the second lineup corroborated Phillips' identification of League as the man with the semiautomatic handgun.

*People v. Williams, supra*, 93 Cal.App.3d 40 does not convince us otherwise. *Williams*, a retrial of rape and kidnapping charges, involved a challenge to a trial court ruling permitting multiple exhibitions in which the defendant's three codefendants were paraded in front of the jury in prison garb. (*Williams*, at pp. 64-65.) The exhibitions occurred during an arresting police officer's testimony, during the reading of the victim's first trial testimony identifying the three men as coperpetrators, and during the prosecutor's closing argument. (*Ibid.*) The Court of Appeal held the victim's

identification of three of the four coperpetrators had no tendency in reason to establish the accuracy of her identification of the defendant as one of the perpetrators, and likewise there was no relevance to the police officer's observations about the order in which he arrested the men. (*Id.* at pp. 65-66.) It further focused on the fact the coperpetrators wore jail attire, which compelled it to conclude the trial court's practice was prejudicial error mandating reversal of the defendant's conviction. (*Id.* at pp. 67-68.) It reasoned: "[T]he circumstances under which the codefendants were paraded before the jury while wearing jail garb had to lead inexorably to the conclusion that the jury would probably find the defendant guilty because of this procedure and the testimony of [the police officer] and the first-trial testimony of . . . the victim, which was part of this procedure." (*Id.* at p. 67.)

The trial court's evidentiary ruling in this case is vastly different from that in *Williams*: there was no live identification during trial, no involvement of prison garb, and no indication during any witness's testimony that the individual that was the subject of the first lineup – Davis – was convicted of any crime.<sup>2</sup> Davis was not identified by name during Officer Samilo's direct examination, and he was referred to as "suspect 1" or the "first suspect" during the officer's cross-examination. Further, as stated, given the need to prove League had the semiautomatic handgun, the order in which the witnesses identified

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<sup>2</sup> San Diego Police Officer Kevin Duffy had already testified without objection that the person he found in the parking lot was later identified as Davis, and that he detained and arrested him.

the men, combined with Samilo's testimony about the order of the lineups, was relevant. *Williams* is inapposite.

Even if we were to assume *arguendo* the trial court erred in admitting Officer Samilo's testimony about Davis' curbside lineup and his identification by witnesses, it is harmless error. Where a trial court's erroneous evidentiary ruling does not constitute a refusal to allow a defendant to present a defense, the error is not constitutional and is analyzed for prejudice under *People v. Watson* (1956) 46 Cal.2d 818 – that is, the judgment should be reversed only if it is reasonably probable that defendant would have obtained a more favorable result absent the error. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1325; *People v. Cudjo* (1993) 6 Cal.4th 585, 610-612.) League points to asserted weaknesses in Phillips' and Valencia's testimony, as well as that of other witnesses. But he has shown no reasonable probability of a different outcome absent Samilo's testimony given the testimony of other witnesses (i.e., Mortenson) independently identifying League as the assailant leaving the Old Navy store brandishing a semiautomatic handgun, as well as police officers who located him with the gloves and handgun in a nearby parking lot. League cannot show prejudice under this standard.

## II. *Exclusion of Evidence Regarding Witness Mortenson*

Just before the prosecutor was to present Mortenson as a witness, she raised the fact that in February 2007 he had undergone a mental health evaluation based on a suicide attempt using alcohol and prescription medication. League's counsel asked the court to admit that mental health evidence to impeach the witness as circumstantial evidence that Mortenson may have been under the influence of alcohol and/or drugs at



the time he observed the acts in issue. Pointing out the attempt was "after the fact" of the date of the offense by about a year and a half, the court excluded the evidence as irrelevant to Mortenson's impeachment.

League contends this ruling was error implicating his federal and state rights to due process; that the evidence of Mortenson's "mental health history" as related to alcohol and drugs was of substantial probative value in assessing the accuracy of the witness's recollection and recounting of events – which League maintains was uncorroborated by other evidence. He relies primarily on *People v. Samuels* (2005) 36 Cal.4th 96 (*Samuels*) and *People v. Yeats* (1984) 150 Cal.App.3d 983 (*Yeats*), in which evidence of drug and alcohol abuse, or a threat to the witness was held admissible to the issue of the witnesses' credibility.

Relevant evidence is evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) Even relevant evidence may be excluded "if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evidence Code, § 352.) "As with all relevant evidence . . . the trial court retains discretion to admit or exclude evidence offered for impeachment. [Citations.] A trial court's exercise of discretion in admitting or excluding evidence is reviewable for abuse [citation] and will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of

justice." (*People v. Brown* (2003) 31 Cal.4th 518, 534; see also *People v. Ledesma* (2006) 39 Cal.4th 641, 705.)

There is no doubt that "[t]he mental illness or emotional instability of a witness can be relevant on the issue of credibility, and a witness may be cross-examined on that subject, if such illness affects the witness's ability to perceive, recall or describe the events in question." (*Samuels, supra*, 36 Cal.4th at p. 116, quoting *People v. Gurule* (2002) 28 Cal.4th 557, 591-592.) At the same time, our high court explains that "there is a 'judicial policy disfavoring attempts to impeach witnesses by means of psychiatric testimony.'" (*People v. Chatman* (2006) 38 Cal.4th 344, 375.) Such testimony on witness credibility may not be relevant; the techniques or theories may not be generally accepted; the psychiatrist may not be in any better position to evaluate credibility than the juror; too much reliance may be placed on the testimony, or the testimony may be distracting, time-consuming and costly. (*Ibid.*)

Here, League provides no authority demonstrating that Mortenson's mental health as it relates to his alcohol and drug use more than a year *after* the event at issue had a tendency in reason to prove he was under the influence of alcohol or drugs at the time he witnessed the event, or that his emotional state in February 2007 otherwise influenced or bore upon Mortenson's perception or ability to recall the events occurring over a year previously. League made no offer of proof lending relevance to Mortenson's later use of such substances, such as expert testimony on the issue (e.g., *People v. Herring* (1993) 20 Cal.App.4th 1066, 1072; but see *People v. Chatman, supra*, 38 Cal.4th at p. 375) or a demonstration of facts indicating that Mortenson suffered from long term mental or

emotional instability brought about by alcohol and drug use. (See e.g., *People v. Anderson* (2001) 25 Cal.4th 543, 608-609 [conc. opn. of Kennard, J., indicating factors a court should consider in allowing such evidence is the nature of the psychological problem, its temporal recency or remoteness, and whether the witness suffered from the condition at the time of the events to which he or she is to testify], cited with approval in *People v. Gurule, supra*, 28 Cal.4th at p. 592.) In the absence of any such showing, the trial court logically and reasonably concluded that Mortenson's February 2007 alcohol or drug use was too remote – it had little to no bearing on the witness's credibility or ability to tell the truth at the time of the incident more than a year earlier.

Neither *Samuels* nor *Yeats* compels a different conclusion. In *Samuels, supra*, 36 Cal.4th at p. 116, a murder-for-hire case, a defense witness testified that she saw a prosecution witness, Heidi Dougall (who had testified the defendant told them she wanted her husband dead), use cocaine while they were in a limousine with the defendant. (*Samuels, supra*, 36 Cal.4th at pp. 116, 144.) On appeal, the defendant argued the trial court was biased because it refused to permit any reference to Dougall's psychiatric hospitalization, but the record contradicted that contention because the trial court had permitted examination as to whether Dougall had taken any medications, drugs, or alcohol that could have influenced her observations and also whether she was in the care of any doctors, but it had disallowed questioning on her suicide attempt. (*Ibid.*) This ruling was upheld on appeal as a correct limitation of cross-examination. (*Ibid.*) We fail to see how *Samuels* establishes an abuse of discretion in this case, where there is

no indication Mortenson was experiencing mental or emotional instability, or misusing alcohol or drugs, at the time of the offense.

*Yeats* held that evidence of a threat on a witness was admissible on the issue of credibility when there was a threshold showing that the witness's testimony "is inconsistent or otherwise suspect." (*Yeats, supra*, 150 Cal.App.3d at p. 986.) There, the witness's testimony directly conflicted with a police officer's testimony, and thus evidence of threats made to him was admissible to show he was fearful and had a motive not to tell the truth. (*Ibid.*) League maintains Mortenson's version of events was disputed by the defense and there is no corroboration for the witness's testimony about their encounter. However, we see no comparison between the circumstances in *Yeats*, involving a possible threat, and this case, involving a mental health issue that is especially remote in time after the incident. Further, Mortenson's testimony was not shown to be inconsistent with another prosecution witness as was the case in *Yeats*. *Yeats* in our view is inapposite.

We concede that " '[c]ross-examination to test the credibility of a prosecuting witness in a criminal case should be given wide latitude. . . . ' " (*People v. Brown, supra*, 31 Cal.4th at p. 545.) Yet, "such latitude does not 'prevent the trial court from imposing reasonable limits on defense counsel's inquiry based on concerns about harassment, confusion of the issues, or relevance' [citations]. Moreover, reliance on Evidence Code section 352 to exclude evidence of marginal impeachment value that would entail the undue consumption of time generally does not contravene a defendant's constitutional rights to confrontation and cross-examination." (*Ibid.*) The trial court gave little to no

probative value to Mortenson's February 2007 incident, a ruling justified by its remoteness. Because League has not established an abuse of discretion in the trial court's ruling, we need not address his prejudice arguments.

### III. *Denial of Motion to Strike Prior Robbery Conviction*

League contends the trial court erred in denying his motion to strike his prior 1994 robbery conviction, which occurred when League was a juvenile. Specifically, League maintains the court "fail[ed] to properly balance relevant factors" in its ruling; that it relied primarily on the fact he spent most of his time in prison following the 1994 offense and the similar nature of the current crime as opposed to numerous other facts that assertedly weigh in favor of granting the motion. He suggests that the court took little or no account of the particulars of his background, character, and prospects.

We review the trial court's decision refusing to strike League's prior conviction for abuse of discretion. (*In re Large* (2007) 41 Cal.4th 538, 552.) A "court in exercising its discretion under the Three Strikes law 'must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.' " (*Ibid.*) A trial court's discretion, however, is limited in the context of a motion to dismiss one or more strike priors. " '[T]he Three Strikes law does not offer a discretionary sentencing choice, as do other sentencing laws, but establishes a sentencing

requirement to be applied in every case where the defendant has at least one qualifying strike, unless the sentencing court "conclud[es] that an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme." ' ' ' (*People v. Carmony* (2004) 33 Cal.4th 367, 377.)

In challenging the trial court's ruling, League points out many factors that he believes warranted granting his motion, including the fact his strike prior was a "practical joke," he was employed and helping his family before his arrest, he is young and has a good support system of friends and family, he has an employer willing to rehire him if released from custody, and he made contributions to his community. But in conducting its analysis, the court acknowledged these matters: it referenced the age of League's prior offense and League's claim that he did not use a gun and it was a "joke," but pointed out that League was nevertheless convicted of robbery with a gun charge for his actions. The court observed that only five months after leaving prison for that offense, League did "virtually the same identical thing" in connection with the present offense, violating his parole terms. The court stated in part, ". . . what troubles me, you get out of prison and you are on parole, you are complying with the terms and conditions of parole. And five months later, after you have enrolled in college, you are getting good grades, you have an apartment, you have money coming from your job, for whatever reason you decide to go to the Old Navy store on the day after Christmas in 2005. It is a crowded shopping area, just west of Interstate 15, a lot of people around. [¶] And your story is, you went to purchase marijuana. [The prosecutor] may not believe that. Clearly, the jury didn't

believe it. Two people witnessing the same event will see it and perceive it differently. But you told your story to the jury. They, evidently, didn't go along with that. [¶] Even if that's the case, by doing that, you are violating the law and you are violating your parole terms." The court acknowledged League was intelligent and articulate and that after his release from prison he had gotten good grades in school, had a supportive girlfriend, a job, and the support of family and friends who were present at the hearing. The court could not reconcile these positive factors with League's conduct in returning to commit a serious crime. Having considered all of the circumstances, the court concluded it would be an abuse of discretion to strike the strike.

The court had before it League's motion as well as all of the personal information League urges should have caused it to grant his motion, but it carefully weighed the facts to reasonably conclude League's case did not warrant an exception to the Three Strikes scheme. "The concept of discretion implies that, at least in some cases, a decision may properly go either way." (*In re Large, supra*, 41 Cal.4th at p. 553.) In keeping with this principle, the fact League can make a good argument for striking a strike prior in the furtherance of justice does not require reversal. (*Carmony, supra*, 33 Cal.4th at p. 378 [it is not enough to show that reasonable people might disagree about whether to strike one or more prior conviction allegations].) Rather, League "finds himself in the difficult position of having to rebut the 'strong presumption' [citation] that the trial judge properly exercised his discretion in refusing to strike a prior conviction allegation." (*In re Large*, at p. 551, quoting *Carmony*, at p. 378.) Based on the evidence in the record and the

court's balancing of the various factors, we conclude League has not shown the court abused its discretion by refusing to strike his 1994 robbery conviction.

DISPOSITION

The judgment is affirmed.

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O'ROURKE, J.

WE CONCUR:

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BENKE, Acting P. J.

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McDONALD, J.